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Medicare 45 percent Trigger

What is the Medicare Trigger?

The Medicare Prescription Drug, Modernization, and Improvement Act (P.L. 108-173, MMA) included a provision that requires Presidential and Congressional action if general taxpayer revenues provide more than 45 percent of Medicare funding for two consecutive years.

**Note: In addition to the Medicare 45 percent Trigger, the MMA created the Medicare prescription drug program and established the Medicare Advantage program. The House passed the MMA on November 22, 2003, by a [vote of 220 to 215](#). The President signed the bill into law on December 8, 2003.*

In 2006 and 2007, the Medicare Board of Trustees reported that the percentage of general revenue that funds Medicare exceeds 45 percent. The 2007 Trustees Report officially triggered the "Medicare funding warning."

**Note: According to the 2007 Medicare Trustees Report, "Medicare expenditures were \$408 billion in 2006 and are expected to increase in future years at a faster pace than either workers' earnings or the economy overall." ([2007 Medicare Trustees Report](#))*

Once the Medicare funding warning has been issued, the President is required to submit a legislative proposal to Congress, within 15 days of submitting the fiscal year 2009 Budget, which will lower the funding ratio to 45 percent. Congress is required to expedite consideration of a proposal to lower the percentage of general revenue used to fund Medicare.

**Note: The House-passed CHAMP Act (H.R. 3162) included a provision that would have repealed the Medicare 45 percent Trigger. H.R. 3162 was not considered by the Senate. ([Legislative Digest for H.R. 3162](#))*

The President's Proposal

On Friday, February 15, 2008, the President submitted the Medicare Funding Warning Response Act of 2008 to Congress. A summary of the President's proposal follows:

Title I: Principles of Value-Based Health Care

The Secretary of Health and Human Services is required to develop and implement a system for encouraging the use of interoperable electronic health records and to make personal health records available to Medicare beneficiaries.

The proposal requires the Secretary to make information about prices and payments for Medicare treatments and services more transparent, as well as make information regarding the quality of care provided to Medicare beneficiaries available to assist beneficiaries in choosing providers, plans, and treatments.

In addition, the Secretary is directed to develop an incentive program for Medicare providers and suppliers that would tie a portion of their Medicare payment to the quality and efficiency of care provided.

Title II: Medical Liability Reform

The proposal establishes a three year statute of limitations for malpractice lawsuits.

It does not place a cap on economic damages; however the proposal does place a \$250,000 cap on non-economic damages. In addition, it implements a "fair share rule" which makes each party in the suit liable only for the damages that are directly proportional to their amount of responsibility.

Under this proposal, punitive damages can only be awarded against a party if it is proven that the person acted with malicious intent to injure the claimant or that the person deliberately failed to avoid unnecessary injury that the person knew the claimant was substantially certain to suffer. Punitive damages are limited to the greater of \$250,000 or twice the economic damages. In addition, no punitive damages can be awarded against a manufacturer or distributor of medical products that comply with FDA standards.

Title II preempts state law if it prevents the application of these medical liability provisions; however it does not preempt state law that provides greater protections for health care providers or organizations or that specify particular damage limits or affect any defenses available to a party under any other provision of State or Federal law.

Title III: Medicare Part D Income Threshold

The President's proposal establishes an income-adjusted premium for Medicare Part D. The Federal subsidy for Medicare Part D would be reduced for individuals making more than \$82,000 per year (\$164,000 for married beneficiaries).

**Note: The MMA established income-adjusted premiums for Medicare Part B at these same levels.*

Congressional Action

As required by the legislation, Majority Leader Steny Hoyer and Republican Leader John Boehner introduced the President's proposal on February 25, 2008 – three legislative days after the President submitted his proposal to Congress. The relevant House Committee must report Medicare funding legislation by June 30, 2008.

**Note: The Chairman of the House Committee on the Budget must certify that the reported legislation would adequately reduce the need for general revenue funding.*

The House is required to consider the bill within three days of it being discharged by the Committee.

The Senate follows a similar process as the House. The bill is introduced and then referred to the Senate Committee on Finance, where it must be reported by June 30, 2008.

Additional Resources

Legislative Text for the [Medicare Funding Warning Response Act of 2008](#)

[Letter of Transmittal](#) for the Medicare Funding Warning Response Act of 2008 from Secretary Michael Leavitt to Speaker Nancy Pelosi